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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|---|---|---|---|
| 10/089,338 | 01/17/2003 | Brian Francis Gray | AA431 | 1452 |

27752 7590 08/11/2011

THE PROCTER & GAMBLE COMPANY
Global Legal Department - IP
Sycamore Building - 4th Floor
299 East Sixth Street
CINCINNATI, OH 45202

| EXAMINER | |
|---|---|
| HAND, MELANIE JO | |
| ART UNIT | PAPER NUMBER |
| 3761 | |

| MAIL DATE | DELIVERY MODE |
|---|---|
| 08/11/2011 | PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/089,338 | GRAY ET AL. | |
| | Examiner | Art Unit | |
| | MELANIE HAND | 3761 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☒ Responsive to communication(s) filed on *07 April 2011*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1 and 10-12* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1 and 10-12* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *1/9/11*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

## DETAILED ACTION

1. In view of the pre-appeal conference request filed on April 7, 2011, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

### *Response to Arguments*

2. Applicant's arguments, see Pre-Appeal Brief Conference Request, filed April 7, 2011, with respect to the rejection(s) of claim(s) 1 and 10-12 under 35 U.S.C. 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a newly found prior art reference.

### *Information Disclosure Statement*

3. The information disclosure statement (IDS) submitted on January 9, 2011 was filed after the mailing date of the non-final action on August 3, 2010. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### *Claim Rejections - 35 USC § 103*

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanser (WO 98/42286 A1) in view of Tsuchiya (JP 04-120138 A) (English abstract only).

With respect to **claims 1,12:** Hanser discloses an absorbent article 20 comprising a pair of longitudinal side edges 34, a liquid pervious topsheet 24, a liquid impervious backsheet 26 joined to said topsheet, and an absorbent core 28 positioned between said topsheet 24 and said backsheet 26. (Page 11, lines 17-25) The absorbent article comprises an oil-based skin care composition contained in microcapsules 160 provided on at least a portion of said topsheet 24 (Page 23, lines 28 – 33, Page 24, lines 17-21) A flap 52 extends laterally outwardly from each longitudinal side edge 34, said flap 52 comprising a garment surface, said garment surface of said flap 52 comprising a flap adhesive 54. (Page 16, line 32, Page 17, line 5) Hanser discloses by reference to U.S. Patent No. 4,687,478 to Van Tillburg a flap that comprises a barrier sheet in the form of a flap liner attached only to said flap of said absorbent article 10 by flap adhesive 236. (‘286, Page 17, lines 10-16; ‘478, Fig. 2, Col. 3, lines 63-68) This barrier sheet, as can be seen in Fig. 2 of Van Tillburg, only covers a portion of the article that is the garment surface of each flap 244. With respect to the limitations “wherein said barrier sheet reduces the migration of the skin care composition therethrough” and “to protect said flap adhesive from said oil-based skin care composition”, the article of Hanser by reference to Van Tilburg meets all of the limitations of claim 1 as to an oil-based composition, flaps and a barrier sheet. Therefore these limitations, which constitute functional language, are anticipated by Hanser as well because the

barrier sheet disclosed is fully capable of protecting the flap adhesive from the oil-based composition. Hanser discloses by reference to Van Tilburg a barrier sheet 238 that is made of the same material as a central release liner 222, i.e. "L 30 MG-A Silox E1/0 and BL 30 MG-A Silox 4 P/O, both of which are manufactured by the Akrosil Corporation." ('478, Col. 6, lines 65-68, Col. 5, lines 15-20)

These materials disclosed by Hanser are silicone-coated paper release liners and therefore the barrier sheet 238 comprises inorganic material i.e. silicone, however the silicone is not in particulate form. Tsuchiya discloses a barrier sheet comprising a component, namely a silica powder, i.e. inorganic particles. Tsuchiya discloses that this sheet serves as a release layer and acts as a packaging material for a sanitary napkin. Thus it would be obvious to one of ordinary skill in the art to modify the article disclosed by Hanser by replacing the barrier sheet with the barrier sheet disclosed by Tsuchiya to provide a release layer that also serves as a protective packaging material for the napkin. ('138, whole document)

With respect to **claim 10:** At least one surface of the barrier sheet 238 disclosed by Van Tilburg (incorporated by reference by Hanser) is treated so as to be releasable inasmuch as the barrier sheet 238 is explicitly disclosed as a release liner and the materials disclosed for the release liner are papers coated at least on one side with a silicone coating, which is responsible for the releasable nature of the liner.

With respect to **claim 11:** Each flap disclosed by Hanser by reference to Van Tilburg is bent (i.e. folded) along axes of flexibility 256,234 to form folded flaps. Since the barrier sheet is only attached to the flaps at the flap adhesive, the barrier sheet is necessarily also attached only to said folded flaps by said flap adhesive. ('478, Fig. 7, Col. 7, lines 20-54)

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/
Primary Examiner, Art Unit 3761